

# SUMMONS ISSUED

## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Abdul Hakeim Thabet Ahmed,

Plaintiff,

v.

U.S. Citizenship and Immigration Services,  
U.S. Department of Homeland Security,

**FILED**

CLERK'S OFFICE

DISTRICT COURT E.D.N.Y.

Defendants.

DEC 21 2011 ★

**CV 11 - 6230**

No. -- Civ. ----

**AMON, CH.J.**

BROOKLYN OFFICE **COMPLAINT FOR INJUNCTIVE RELIEF**

1. Abdul Hakeim Thabet Ahmed, a lawful permanent resident of the United States, brings this Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, action to challenge the government's failure to respond adequately to his request for all U.S. Citizenship and Immigration Services ("USCIS") records concerning him, including his Alien-File ("A-File"). Although Mr. Ahmed is subject to removal proceedings and his Freedom of Information Act request ("Request") has been in USCIS's accelerated processing track for more than ten months, neither USCIS nor its parent agency, the U.S. Department of Homeland Security ("DHS"), has released a single document in response to the Request.

2. On October 19, 2010, Mr. Ahmed was served with a Notice to Appear for removal proceedings in Immigration Court. On December 29, 2010, Mr. Ahmed filed a FOIA request with USCIS for his entire A-File and any documents in possession of USCIS concerning him, requested expedited processing of the Request, and provided the October 19, 2010 Notice to Appear as supporting documentation. The A-File is a series of records USCIS maintains on Mr. Ahmed as a subject of immigration enforcement proceedings and includes records concerning his

interaction with USCIS or other components of the Department of Homeland Security. Mr. Ahmed sought his A-File and all other USCIS documents concerning him in order to properly defend himself against charges of removal.

3. On February 11, 2011, the Request was placed in Track Three processing, a track created by USCIS to permit the accelerated processing of FOIA requests by individuals who are scheduled to appear before an immigration judge.

4. Since October 2, 2011, Mr. Ahmed's request has been listed as number three in the list of pending USCIS FOIA requests in Track Three processing.

5. The Defendants have failed to fulfill their obligation to make the requested information available in an accelerated manner. Neither USCIS nor DHS has released a single document in response to the Request. Despite having placed the Request in the accelerated processing track more than ten months ago, Defendants have failed to provide Mr. Ahmed any of the requested records. As a result, Mr. Ahmed was without his Alien-File and other requested documents when preparing for the first date of his removal hearing before the Immigration Court on October 24, 2011.

6. Mr. Ahmed is entitled to the records he seeks. Mr. Ahmed has been placed in removal proceedings and needs the requested USCIS records, including his Alien-File, to prepare for his removal hearing, which will be continued before the Immigration Court on February 14, 2012. Without the requested records, Mr. Ahmed will be prejudiced in his ability to defend himself against the charge that he abandoned his lawful permanent resident status. The Defendants' failure to provide the requested information may result in Mr. Ahmed's loss of his lawful permanent resident status and his ability to live and work in the United States.

7. Mr. Ahmed seeks an injunction requiring Defendants to process the Request immediately and expeditiously, to conduct a thorough search for all records responsive to the Request, and to release all records that have been unlawfully withheld no later than February 7, 2012, one week prior to his February 14, 2012 removal hearing in Immigration Court.

#### **Jurisdiction and Venue**

8. This Court has both subject matter jurisdiction of this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and (6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

9. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

#### **Parties**

10. Plaintiff Abdul Hakeim Thabet Ahmed is a fifty-three-year-old citizen of Yemen and a lawful permanent resident of the United States. He resides in Brooklyn, New York.

11. Defendant U.S. Citizenship and Immigration Services is a component of the U.S. Department of Homeland Security and is an agency within the meaning of 5 U.S.C. § 552(f)(1). USCIS is headquartered in Washington, D.C. The National Records Center of USCIS is located in Lee's Summit, Missouri.

12. Defendant Department of Homeland Security is a Department in the Executive Branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). DHS is headquartered in Washington, D.C.

#### **Factual Allegations**

13. On October 19, 2010, Mr. Ahmed arrived in John F. Kennedy International Airport following a trip to visit family in Yemen. Upon his arrival, Mr. Ahmed was served with a Notice to Appear for removal hearings before the Immigration Court, which charged him with

abandoning his lawful permanent resident status. The Notice to Appear assigned Mr. Ahmed file number A-041-989-550.

14. A Superseding Notice to Appear charging Mr. Ahmed with abandonment of his lawful permanent resident status on the basis of different factual allegations was issued on November 16, 2010.

15. Mr. Ahmed sought to prepare for his removal proceedings by obtaining his Alien-File. The A-File is the series of records USCIS maintains on, among others, individuals who have become subjects of immigration enforcement proceedings. The A-File documents the history of subjects' interaction with USCIS and other DHS components in actions prescribed by the Immigration and Nationality Act and related regulations. USCIS uses the information in immigration proceedings.

16. On December 29, 2010, Mr. Ahmed's counsel filed a FOIA request on his behalf seeking the release of Mr. Ahmed's entire A-File and any and all other records concerning him in the agency's possession by completing a Form G-639, Freedom of Information/Privacy Act Request and a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. The Request sought expedited processing and included a copy of the October 19, 2010 Notice to Appear in support. In the Request, Mr. Ahmed consented to the release of the requested information to his attorney.

17. By letter dated January 19, 2011, USCIS confirmed its receipt of the Request, assigned it tracking number NRC2011008377, and indicated that the Request was placed in Track Two processing because Mr. Ahmed had not submitted appropriate documentation to support the request for Track Three processing.

18. By letter dated January 24, 2011, counsel for Mr. Ahmed again asked that the Request be placed in Track Three processing, explained that documentation supporting the request for expedited processing had been provided with the original Request, and resubmitted a copy of the October 19, 2010 Notice to Appear.

19. By letter dated February 11, 2011, USCIS confirmed that the Request was “placed in the fast track (Track 3).”

20. USCIS established Track Three processing to provide “accelerated access to the Alien-File (A-File) for those individuals who have been served with a charging document and have been scheduled for a hearing before an immigration judge as a result.” Special FOIA Track for Individuals Appearing Before an Immigration Judge, 72 Fed. Reg. 9017, 9017-18 (Feb. 28, 2007). Individuals requesting Track Three processing of their FOIA requests to USCIS are required to submit supporting documents, such as a “Form I-862, Notice to Appear, documenting the scheduled date of the subject’s hearing before the immigration judge.” *Id.* at 9018.

21. On April 29, 2011, Mr. Ahmed’s counsel used the USCIS website to check on the status of the Request. It was listed as number 130 of 2291 pending requests in Track Three processing.

22. On September 26, 2011, the USCIS website indicated that the Request was number five of 1402 pending requests in Track Three processing.

23. On October 2, 2011, the USCIS website indicated that the Request was number three of 1355 pending requests in Track Three processing.

24. By letter dated October 20, 2011 and sent to USCIS by email and fax, Mr. Ahmed’s counsel challenged USCIS’s failure to provide any records in response to the Request despite the fact that it had been in Track Three processing for more than eight months. The letter

challenged the agency's failure to carry out its obligations under the FOIA to promptly provide the requested information and to refrain from improperly withholding information. The letter also sought the immediate processing of the Request and release of the requested records in light of Mr. Ahmed's upcoming removal hearing on October 24, 2011.

25. As of October 24, 2011, the Defendants had failed to provide any records responsive to the Request. Mr. Ahmed was forced to prepare for, and to appear at, the first date of his removal hearing on October 24, 2011 without any of the requested information.

26. By letter dated October 24, 2011, USCIS acknowledged receipt of Plaintiff's October 20, 2011 letter and indicated that the Request was number three of 1453 pending requests in Track Three processing.

27. On December 21, 2011, the USCIS website listed the Request as number three of 1987 pending requests in Track Three processing.

28. As of the date of the filing of this complaint, USCIS has not released any documents to Plaintiff in response to the Request. Plaintiff has exhausted all applicable administrative remedies available with USCIS with respect to the Request and has received no further response from USCIS.

29. DHS has provided no response to Plaintiff's Request apart from the USCIS correspondence described above. Plaintiff has exhausted all applicable administrative remedies available with DHS with respect to the Request.

### **Causes of Action**

30. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents under 5 U.S.C. § 552(a)(4)(B) because Defendants continue to improperly withhold and/or delay the processing of agency records in violation of the FOIA.

Plaintiff will also suffer irreparable injury from, and have no adequate legal remedy for, Defendants' withholding of, and prolonged delay in, production of government documents concerning his A-File and any other USCIS documents pertaining to him, which he needs in order to adequately defend himself in ongoing removal proceedings in Immigration Court.

31. Defendants' failure to release records responsive to Plaintiff's Request violates the FOIA, 5 U.S.C. § 552(a)(3).

32. Defendants' failure to timely respond to Plaintiff's Request violates the FOIA, 5 U.S.C. § 552(a)(6)(A).

33. Defendants' failure to make a reasonable effort to search for records responsive to the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(C).

34. Defendants failure to make promptly available the records sought by Plaintiff's request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and DHS regulations, 6 C.F.R. § 5.6(b).

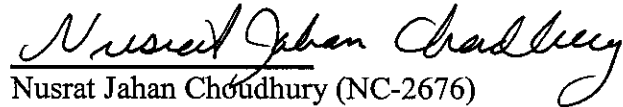
#### **Requested Relief**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order Defendants to conduct a thorough search for all responsive records;
- B. Order Defendants to immediately and expeditiously process all requested records, disclose the requested records in their entirety, and make copies available to Plaintiff;
- C. Enter a permanent injunction ordering the relief requested herein against the Defendants;

- D. Award Plaintiff his litigation costs and reasonable attorneys' fees incurred in this action; and
- E. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: December 21, 2011